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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 18th September, 2019

+ W.P.(C) 1903/2018

STATE BANK OF INDIA

..... Petitioner

Through: Mr.P.B.A. Srinivasan, Adv. with
Mr.Parth Tandon, Adv.

versus

SH. V.K. BAKSHI

..... Respondent

Through: Mr. Rajiv Aggarwal, Ms. Meghna De,
and Mr. Sugandh Kochhar, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition under Article 226 of the Constitution of India assails the Award dated 04.05.2017 passed by the learned Central Government Industrial Tribunal cum Labour Court No.1 Karkardooma Court, Delhi, in ID No.26/2011 whereunder the learned Labour Court has, after coming to the conclusion that the respondent was guilty of Charges levelled against him, held that the punishment of dismissal from service imposed on the respondent by the petitioner/bank, was very grave and disproportionate as neither of these charges related to any moral turpitude on his part. The Labour Court has, accordingly, substituted the penalty of removal from service by reducing the same to stoppage of three increments with

cumulative effect.

2. The case of the respondent/workman was that he was posted as a Senior Assistant in the petitioner/Bank. On 27.03.2006, the petitioner Management served him with a chargesheet setting out the following charges:-

“1. SBI Cards & payment Services Pvt. Ltd. have advised that you have not made the payment against the SBI Credit Card No.0004006661011723314 since January 2004 despite various communications from them and by Zonal Office/branch. The present outstandings there against are Rs.28,181.35.

2. You have issued undernoted cheques without maintain sufficient crediting your account which were returned with the objection ‘Insufficient Funds’ by Shakti Nagar branch:

(i) Cheque No.572915 dated 18.01.2015 for Rs. 11,020.00 favouring Northern India Paint Colour & Varsney Co. Ltd. returned on 12.05.2005.

(ii) Cheque No.110898 dated 15.06.2005 for Rs.1466.00 favouring G.E. Countrywide.

Consumers Financial Services Ltd. returned on 16.06.2005.”

3. You have raised loan from Everglad Chit Funds Pvt. Ltd. without obtaining specific approval from the competent authority. In this connection, an attachment order issued on 27.09.2003 by Civil Judge, Tis Hazari, Delhi for attachment of your salary to the extent of Rs.59,495/- due to the decree holder M/s Everglad Chit Funds Pvt. Ltd. was received at our Shakti Nagar Branch. Monthly instalment of Rs.2000/- of your salary is being remitted to the court and Rs.20,000/- (Approx) have so far been appropriated.

4. You raised loan of Rs.50,000/- from Indian National Co-op (NA) Thrift & Credit Society Ltd. Hissar on 04.07.2003 without seeking prior permission of the bank. Further, you issued an Account Payee cheque no. 403411 dated 25.09.2004 drawn of SBI, GT Karnal Road, Delhi for Rs.77,240/- in favour of the above society. Before the cheque could be presented, you closed the account. You were served with a legal notice on 13.10.2004 under section 138/141 of Negotiable Instruments Act on 01.10.2005, Hissar and Delhi Police Officials came to Shakti Nagar branch with non-bailable warrants issued by Judicial Magistrate, Hissar to arrest you and took you away at 2:00 pm.

5. The total deduction from the salary is 81.07% against the Bank's extent instructions that total deductions will not be more than 60% of the gross salary.

6. You have raised loan from undernoted Thrift & Credit Societies whereas as per extent instructions an employee cannot be member of more than one T & C Society:

- (i) Bank Staff Co-op Urban SE T & C Society Ltd., Hissar.
- (ii) International Co-op Non Agriculture T & C Society Ltd., Hissar.
- (iii) ECBE Staff Co-op Credit Society Ltd., Meerut.
- (iv) Indian National Co-op Non. Agri. T & C Society Ltd., Hissar.
- (v) Bhartiya State Bank Karyakarta Co-op T & C Society Ltd., Kirti Nagar.
- (vi) SBI Employees T & C Society Ltd., Ranjit Nagar, Delhi.

The aforesaid lapses, if established tantamount to "MAJOR MISCONDUCT" in terms of para 5 (e)(j) of Provisions of Disciplinary Proceedings Settlement

dated 10.04.2002.”

3. Although the respondent denied these charges in the departmental inquiry which was conducted against him by the petitioner management, all the charges were proved against him consequently leading to his dismissal from service on 03.05.2007. Aggrieved by his dismissal, the respondent raised an industrial dispute which was referred to the Labour Court for adjudication.

4. Before the Labour Court the respondent while admitting his mistake, explained the circumstances in which he had taken these loans and offered his reason for issuing cheques to the lending institutions without maintaining the requisite balance in his account. The respondent admitted to having been issued a credit card by SBI Card and Payment Services Limited, which was a subsidiary of the petitioner bank, he claimed that none of the charges levelled against him amounted to misconduct of any kind as they did not involve any dishonest intention on his part. The charges were merely a result of procedural lapses brought on by his failure to obtain prior approvals from the competent authority before taking loans to finance the urgent needs of his family including payments of the outstanding medical bills of his ailing daughter and the expenses incurred upon him by the sudden demise of his brother.

5. The learned Labour Court after examining whether the actions of the respondent amounted to misconduct, came to the conclusion that though the charges against the respondent stood proved, he was not guilty of any moral turpitude as he had merely raised loans

without seeking prior approval of the competent authority, especially in the light of the fact that these loans already stood repaid. In view of its conclusions, the Labour Court reduced the punishment of dismissal from service imposed on the respondent, on the ground that it was harsh and severe, to stoppage of three increments accruing to him, with cumulative effect.

6. Aggrieved by the impugned Award to the extent of the reduction in penalty imposed upon the respondent, the petitioner bank has preferred the present petition.

7. Learned counsel for the petitioner submits that once the Labour Court agreed with the petitioner's contention that the respondent was guilty of misconduct, there was no justification for the Labour Court to interfere with the penalty imposed on the respondent. He submits that the Labour Court has while interfering with the penalty, overlooked the fact that the petitioner is a bank and every employee of the bank is required to exercise a higher standard of honesty and integrity. He further submits that the tribunal had overlooked the settled legal position that, save in exceptional cases where the penalty imposed shocks the conscience of the court, the punishment imposed by the disciplinary authority should not be interfered with. In support of his aforesaid contention, he places reliance on the decisions of the Supreme Court in *Apparel Export Promotion Council Vs. A.K. Chopra*, AIR 1999 SC 625; *Chairman & Managing Director, United Commercial Bank & Ors. Vs. P.C. Kakkar*, AIR 2003 SC 1571; *Damoh Panna Sagar Rural Reg. Vs. Munna Lai Jain* (2005) 10 SCC 84; *Union of India and Anr. v. G. Ganayutham* (1997 [7]

SCC 463). He submits that the Labour Court itself had observed that the actions of the respondent had caused a lot of embarrassment to the petitioner bank and had tarnished its image. He, therefore, prays that the impugned Award dated 04.05.2017, passed by the Labour Court, be set aside.

8. On the other hand, learned counsel for the respondent supports the impugned Award and submits that none of the charges levelled against the respondent are related to the discharge of his official duties or show any professional dishonesty on his part. He submits that the respondent could not be held guilty of any misconduct merely because he had, at some point, borrowed money for the treatment of his ailing daughter who was suffering from a serious heart problem. He draws my attention to the cross-examination of the management witness being MW-2, who had categorically admitted that none of the charges levelled against the respondent amounted to misconduct as per the rules and regulations of the petitioner bank. He, therefore, submits that the reduction in penalty by the learned Labour Court, in exercise of its discretionary power under Section 11-A of the Industrial Disputes Act, 1947 ('ID Act' for short), was made only after duly considering all relevant circumstances including the respondent's record of unblemished service from his date of appointment to the petitioner/Bank, and ought not to be interfered with by this Court in exercise of its writ jurisdiction.

9. I have heard the learned counsel for the parties and with their assistance perused the record.

10. In the light of the submissions made by the learned counsel for the parties it is evident that the only controversy in the present case is as to whether the labour court was justified in invoking its discretionary power under Section 11-A of the ID Act. While the learned counsel for the petitioner contends that the labour court did not have the jurisdiction to interfere with the penalty once it found that the respondent had admitted to all the charges levelled against him, the respondent's plea is that Section 11-A of the ID Act confers wide powers upon the labour court to interfere in appropriate instances where the penalty imposed by the employer upon a workman is unjustified or arbitrary.

11. The provisions of Section 11-A which were introduced in ID Act in 1971 came to be first considered by the Supreme Court, in ***The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Ors.*** (1973) 1 SCC 813 wherein it was held as under:

“59. The words “has been referred” in Section 11-A are no doubt capable of being interpreted as making the section applicable to references made even prior to December 15, 1971. But is the section so expressed as to plainly make it applicable to such references? In our opinion, there is no such indication in the section. In the first place, as we have already pointed out, the section itself has been brought into effect only some time after the Act had been passed. The proviso to Section 11-A, which is as much part of the section, refers to “in any proceeding under this section”. Those words are very significant. There cannot be a “proceeding under this section”, before the section itself has come into force. A proceeding under that

section can only be on or after December 15, 1971. That also gives an indication that Section 11-A applies only to disputes which are referred for adjudication after the section has come into force.”

12. Similarly, Section 11-A also came to be examined in various subsequent decisions of the Supreme Court thereafter, including in ***Hindustan Motor Ltd. vs. Tapan Kumar Bhattacharya and Anr.*** (2002) 6 SCC 41 wherein it was reiterated that Section 11-A is couched in wide and comprehensive terms and vests the Tribunal with broad discretion in the matter of awarding penalties. Even this Court in ***Municipal Corporation of Delhi vs. Shri Daulat Ram & Anr.*** SCC 2004 (76) DRJ 436 has summarised the principles of law on the scope of interference by Labour Court under Section 11-A of the ID Act by holding as under:-

“(i) The power conferred by Section 11-A of the Act is wide and comprehensive, and yet only discretionary.

(ii) The Labour Court or Tribunal may alter the punishment imposed by the employer even if misconduct is proved.

(iii) Interference by the Labour Court or Tribunal is quantitative enabling it to determine the adequacy or otherwise of the punishment.

(iv) The power is to be exercised judicially, that is, in appropriate cases, as well as judiciously. The power cannot be exercised arbitrarily and interference may take place only if the Labour Court or Tribunal is satisfied about the necessity to interfere.

(v) *Any satisfaction or interference by the Labour Court or Tribunal must be supported by reasons and the reasons are subject to judicial review.*

(vi) *Relevant circumstances such as past conduct may be considered while arriving at a decision, provided they are supported by material on record.*

(vii) *Interference in the quantum of punishment is not called for on grounds of misplaced or uncalled for sympathy.*

(viii) *The concept of proportionality and primary review is inherent in Section 11-A of the Act.”*

13. The very intent of the legislature in introducing Section 11-A in the Act was to ensure that the Labour Court has the power to correct any unjustified imposition of the penalty of discharge or dismissal by an employer on an employee, even in the event that misconduct stands proved against the said employee, and award a lesser punishment in its place. A perusal of the impugned Award shows that the learned Labour Court, while reducing the penalty imposed on the respondent has not only considered the nature of charges levelled against him but has also taken into consideration *inter alia* the challenging financial circumstances compelling the respondent to obtain the aforesaid loans, which loans already stood repaid as also the fact that the respondent had served the petitioner/Bank for over a period of 37 years before being terminated. The labour court also took note of the fact that the respondent had admitted his mistakes and provided due explanation thereto before concluding that he was not guilty of any

moral turpitude. The Labour Court has, therefore, not at all exceeded its jurisdiction but has in my view exercised the same in a most judicious manner by keeping in mind the parameters of interference under Section 11-A of the ID Act.

14. I have also considered the decisions relied upon by the learned counsel for the petitioner and find that none of them pertain to labour law and do not at all deal with the exercise of power under Section 11-A of the ID Act. Even otherwise, I find that in all the decisions on which the petitioner has placed reliance, the charges involved were grave and the misconduct of the employees in these cases either entailed gross moral turpitude or involved financial losses caused to the employer, which is not at all the position in the present case.

15. For the aforesaid reasons, I find absolutely no reason to interfere with the discretion exercised by the labour court. There is no infirmity in the Award warranting interference with the same in exercise of my writ jurisdiction.

16. The writ petition being meritless is dismissed with no order as to costs.

CM No.7884/2018 & CM No. No.10703/2018

17. In view of the writ petition having been dismissed, these applications do not survive for adjudication and are dismissed.

REKHA PALLI, J

September 18, 2019
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